

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALFRED A. GALLANT, JR.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-0127-B
)	
NELSON RILEY, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff has filed a Complaint pursuant to 42 U.S.C. § 1983 together with an Application for Leave to Proceed *in forma pauperis*, or in the alternative, a form with which to make such a request. The Court concludes that Plaintiff has failed to state a claim within the meaning of section 1983. Accordingly, I hereby recommend Plaintiff's Complaint be DISMISSED pursuant to 28 U.S.C. § 1915A(b)(1) (providing for initial screening of prisoner complaints, and dismissal upon a finding that the complaint is frivolous or fails to state a claim upon which relief may be granted).

Plaintiff asserts three claims in this section 1983 action. First, he alleges that Defendant confiscated 22 envelopes containing legal mail and other legal materials. Second, he alleges Defendants improperly confiscated his television for his refusal to work. Third, he challenges a new prison rule under which inmates lose library privileges and the right to possess reading material as a result of any rule infraction.

Plaintiff's first and second claims allege a deprivation of property without due process of law. However, there is no denial of due process if the state provides an adequate remedy. *Parratt v. Taylor*, 451 U.S. 527 (1981). Here, an adequate remedy does exist because Plaintiff can file a state court action to recover damages for the confiscation of his property. *Eg., Loftin v. Thomas*, 681 F.2d

364, 365 (5th Cir. 1982). To the extent Plaintiff's claim regarding his legal material is analyzed under his right to access the courts, it fails for Plaintiff's failure to allege actual injury as a result of the confiscation. *Fletcher v. Casey*, 116 S. Ct. 2174, 2179 (1996).¹ Plaintiff's Complaint fails to state a claim regarding reading materials and library privileges for the simple reason that Plaintiff does not allege that his reading materials were confiscated or his library privileges revoked. Because his injury is speculative and may never occur, the issue is not ripe for judicial review. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967).

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED pursuant to 28 U.S.C. § 1915A(b)(1) for Plaintiff's failure to state a claim upon which relief may be granted.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

¹ Plaintiff asserts in a general way that his ability to litigate certain pending matters, as well as his ability to file various planned lawsuits, is hampered by the loss of these materials. He does not, however, specify how the lack of particular documents caused a particular harm, such as involuntary dismissal of one or more claims.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on June 28, 1997.